
(2015) 02 CESTAT CK 0004

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 666, 667 Of 2009

M/s Jai Bharat Maruti Ltd. And Anr.

APPELLANT

Vs

C.S.T., New Delhi

RESPONDENT

Date of Decision : 20-02-2015

Acts Referred:

Service Tax Rules, 1994 — Rule 2(1), 2(1)(d)(iv), 6, 6(1)
Finance Act, 1994 — Section 66A, 94(2)

Citation : (2015) 02 CESTAT CK 0004

Hon'ble Judges : G. Raghuram, J; R. K. Singh, Technical Member

Bench : Division Bench

Advocate : S.K. Pahwa, B.B. Sharma

Final Decision : Allowed

Judgement

1. The appellants M/s Jai Bharat Maruti Ltd. and M/s Hammatsu Pipe Co. Ltd. Japan have filed these appeals against Order-in- Appeal No. 33-

34/ST/DLH/2009 dated 28/5/2009 which upheld the Order-in-Original dated 4.10.2007 in terms of which a service tax demand of Rs.10,23,859/- for

the period 1998-99 to 2002-03 under the taxable category of ""Consulting Engineers"" service had been confirmed on both the appellants jointly or

severally alongwith interest and penalties. The appellants have contended that HPCL is not an engineering firm and therefore the service rendered by

them would not be classifiable under the category of 'Consulting Engineering Service' and that an order confirming the service tax demand on both the

companies jointly or severally is not sustainable because the adjudicating authority has failed to uniquely identify as to who is liable to pay the

impugned demand. HPCL also contended that they had transferred technical know how which is not classifiable under Consulting Engineering service

and that they being a foreign based company cannot be held liable to pay service tax. M/s JBML argued that reverse charge mechanism is applicable

only from 18.4.2006.

2. The Id. DR, merely restated the contentions contained in the Order-in-Original and the Order-in-Appeal.

3. We have considered the contentions of both sides. Perusal of the impugned order reveals that the Commissioner (Appeals) in the impugned order

notes as under:

Regarding the submission of the appellants that reliance placed by adjudicating authority on Rule 2(1) (d) (iv) of the Service Tax Rules for

making them as recipients of service liable to pay Service Tax, I find that same is without any legal basis. I find that M/s Jai Bharat Maruti

Ltd. were responsible to meet all taxes and charges which have clearly been discussed in para 12 of the impugned order and rely on the

recent judgement in the case of Ker/a State Electricity Board Vs. CCE, Tiruvanthapuram-2008(9)STR 3 (SC) wherein the Hon'b/e Apex

Court has held that the liability of Service Tax lies on the recipients as per the agreement between the appellant and the foreign company

wherein the appellants had been authorized by the foreign company as per proviso to Rule 6 of the Service Tax Rules, 1994 from 28.2.1999

and the amendment to Rule 6(1) from 16.8.2002 was not relevant as responsibility for payment of tax taken by appellants as per agreement.

I further find that Service Tax Rules have been framed under powers conferred by Sub Section (1) read with Sub-Section (2) of the Section

94 of the Finance Act, 1994 by the Central Government, therefore it can not be construed that there were no provisions in the Sections for

making the recipients liable to pay Service Tax as per Rule 2(1)(d)(iv) of the Service Tax Rules. This ground therefore does not hold ground

in view of the principle laid down by the Hon'ble Apex Court in the above cited judgment and is liable to rejected.

It is thus evident that the Commissioner (Appeals) has clearly conceded that M/s Hammatsu Pipe Co. Ltd. are not liable to pay the impugned service

tax as the service tax liability lies on the recipients of the service under Rule 2(1) (d)(iv) of the Service Tax Rules. Consequently the demand against

M/s HPCL is not sustainable.

4. As is evident from the paragraph from the impugned order quoted in Para 3 above, the demand on the appellants M/s Jai Bharat Maruti Ltd. has been confirmed in terms of the reverse charge mechanism under Rule 2(1)(d)(iv) of the Service Tax Rules. It is no longer res-integra that the levy of Service Tax on the recipient of Service under reverse charge mechanism was not legally sustainable prior to 18.4.2006 when Section 66A was introduced in the Finance Act 1994 as has been held, for example, in the case of Commissioner of Central Excise Vs. Bayers Diagnostics 2013 (31) STR 543 (Gujrat) by Gujrat High Court. It is seen that the period involved in this case is 1998-1999 to 2002-03 and therefore the appellant M/s Jai Bharat Maruti Ltd. can not be required to pay the impugned service tax under the reverse charge mechanism even if the service received by them is held to be classifiable under Consulting Engineering Service.

5. In the light of the foregoing the impugned demand is clearly unsustainable and consequently the appeals are allowed.